



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: Thursday, May 22, 2008

TO: Legislative Finance Committee

FROM: Cathy Duncan, Senior Fiscal Analyst, Legislative Fiscal Division

RE: The Historical Society Museum (Heritage Center) Project

The following report presents an update of the Heritage Center project. There will not be a presentation of this information at the Legislative Finance Committee (LFC) meeting of June 5<sup>th</sup> and 6<sup>th</sup>. If you have questions concerning this report, please contact me at (406) 444-4580.

Since the February 20, 2007 memo to the LFC, some progress has transpired in determining the location of the Heritage Center building. As reported in various media, the Governor announced a statement of mutual interest with Richard L.K. Mendenhall, President of Westfield Properties Inc. (the representatives in the sale of the Helena Capital Hills Mall) for the purchase of the mall property. The mall owners' are in the process of preparing a proposed purchase and sale agreement for initial consideration. The state will enter into the purchase and sell agreement only with the successful completion of the fund raising efforts by the Montana History Foundation.

Attached to this report is a copy of the statement of mutual interest between Mendenhall and Janet Kelly, Director of the Department of Administration, through Ann Brodsky of the Governor's Office. The agreement affirms the state's willingness to purchase the mall property for \$6.5 million if the Montana History Foundation is able to raise \$13 million in private donations for the construction of the Heritage Center by November 15, 2008.

The Fifty-ninth Legislature provided an appropriation of \$7.5 million for the Montana Historical Society Building. About \$300,000 of the appropriation has been expended on due diligence and pre-planning, to date. With the negotiated price of \$6.5 million, about \$700,000 of appropriation authority will remain. If the sale goes forward, the remaining appropriation could be used in other aspects of the project, such as demolition of the mall (estimated to cost \$0.75 million to \$1 million) or construction of the museum.

If the property is purchased, it will continue to be operated as a retail mall for 36 months, and the Architecture and Engineering Division will develop a specific implementation plan. Future plans for the museum size and specific space utilization will depend on the success of private fund raising efforts in the 36 month period.

In summary, the state and the owners of the Helena Capitol Hills Mall have entered into a statement of mutual interest for the purchase of the mall. The negotiated price of the mall property is \$6.5 million and state participation in the purchase and sale agreement is conditioned on the successful private fund raising efforts of the Montana History Foundation to raise \$13 million by November 15, 2008. Staff will continue to update the LFC as progress is made in the Heritage Center project.

May 5, 2008

Ann Brodsky  
State Capitol, Room 204  
PO Box 200801  
Helena, MT 59620

Re: Summary of statement of mutual interest for purchasing the Capital Hill Mall, located at  
1600 Eleventh Ave., Helena, Montana

This letter is intended as a summary of a statement of mutual interest from my discussions to date with Governor Schweitzer and yourself for the purchase of the Capital Hill Mall. If agreed to by the State of Montana, as indicated by the State's execution, below, the Seller will proceed to prepare a purchase and sale agreement for the Property for the State's consideration. Neither this letter by me nor a signature, below, by a representative of the State of Montana is intended to be construed as a legally binding contract, nor is this letter or any signature by a representative of the State of Montana intended to confer any legally binding rights or obligations upon any party. The purpose of this letter, and your signature, are to acknowledge this summary of a statement of mutual interest of the Capital Hill Mall Partnership and the State of Montana to proceed with preparation of a purchase and sale agreement in accordance with the proposal outlined below. Either party shall have a complete right to reject a definitive purchase and sale agreement if for any reason the agreement is not acceptable to that party. Please give me a call after your review so we may discuss any questions or concerns you may have.

1. Seller: Capital Hill Mall Partnership
2. Buyer: State of Montana
3. Purchase Price: \$6,500,000 for the fee simple unencumbered interest in the Property (to be paid from proceeds from the sale of bonds issued following closing)
4. The Property: Approximately 13.5 acres, more or less, located within the boundaries of Prospect Avenue, 11<sup>th</sup> Avenue, North Oakes Street, and North Roberts Street, Helena, Montana, together with all improvements thereon including the building improvements of approximately 212,398 sq.ft. and including the building improvements known as the Bison Engineering Building located at 1400 11<sup>th</sup> Avenue, Helena, Montana.
5. Due Diligence Period: November 15, 2008

6. Closing date: December 15, 2008
7. Conditions for Closing:
  - i. Seller acknowledges that purchase by the Buyer is contingent upon fulfillment of a \$13 million fundraising challenge by November 15, 2008, issued by the Buyer to the Montana Historical Foundation, to support the construction of a new Montana State Historical Museum on the Property.
  - ii. Seller acknowledges that purchase by the Buyer is contingent upon Buyer, as Master Lessor, reaching a Lease Agreement, prior to closing, with Lessee in which the Lessee will lease the entire Property for the purpose of continuing to operate the Property as a retail mall for a period of 36 months, unless a different period of time is agreed to by Buyer (Master Lessor) and Lessee.
    - (1) The Lease Agreement shall be structured as an absolute Net Lease to the Lessee, under which lease payments will be made to the Buyer (Master Lessor) and all costs and liabilities associated with the property and its operations being the obligation of the Lessee.
    - (2) Buyer acknowledges that the Lessee will not be the Seller, but will be an entity that is partially or wholly comprised of entities which have held interests in the selling entity. The Buyer reserves the right to approve the Lessee.
    - (3) The Lease Agreement shall allow Buyer (Master Lessor) to have reasonable access to the Property for investigation and analysis of the Property which enables the Buyer (Master Lessor) to facilitate the planning and design process required for the Buyer's ultimate use of the Property.
  - iii. Except as provided in the Lease Agreement, Seller shall deliver fee simple unencumbered interest in the Property, and all matters related to the following shall have been resolved:
    - (1) The termination of the leasehold interests of the retail businesses in the Capital Hill Mall.
    - (2) The termination of the ground lease with the Intermountain Children's Home.
    - (3) The termination of any interest in the property, including improvements thereon, by Bison Engineering.
  - iv. Except as provided in the Lease Agreement, Seller will have entered agreements to terminate or release all rights and interests of any party with an interest in the property, including but not limited to:
    - (1) All lien holders on the property.
    - (2) The interests of the Intermountain Children's Home.
    - (3) The interests of Bison Engineering.
    - (4) All leasehold interests of the current and future retail tenants occupying space in the Capital Hill Mall.

- (5) The necessary consent of the limited partners to authorize the general partner to facilitate the sale of the property.

8. Other Considerations and Issues:

No further financial commitments will be required of Seller in relation to the due diligence matters contained in the following reports (a. through f.). Nothing shall preclude the Buyer from conducting whatever additional due diligence it deems necessary to appropriately evaluate the Property and its suitability for the Buyer's intended use. The Seller agrees to cooperate with and facilitate the transfer of information and additional investigations of the Property that the Buyer may conduct prior to closing:

- a. Architectural Analysis: Study of the Capital Hill Mall Property to determine its feasibility for use as a Statewide Museum; prepared by Crossman Whitney Griffin P.C. Architects, September 2005
- b. Due Diligence Report - Mechanical and Electrical Systems; prepared by WTR Consulting Engineers, September 2005
- c. Due Diligence - Civil Infrastructure Report; prepared by Robert Peccia & Associates, September 2005
- d. Phase 1 Environmental Site Assessment including Hazardous Materials Inspection; prepared by Maxim Technologies, October 2005
- e. Land Survey; prepared by Lay of the Land Surveying, 2005
- f. Roof Inspection; facilitated by the State of Montana, 2005.

Provided the proposal outlined in this letter reflects your understanding of our conversations for the purchase of the Capital Hill Mall, please indicate the State of Montana's interest in negotiating a purchase and sale agreement with the Capital Hill Mall Partnership in accordance with this proposal by executing two copies of this letter where indicated below, keeping one for your files, and returning one to my attention. Upon receipt of the executed letter, our legal counsel, Walker Kennedy, III of Woodbury Corporation will prepare a proposed purchase and sale agreement for your consideration.

Sincerely,  
CAPITAL HILL MALL PARTNERSHIP  
Westwood CHM, L.C., Its General Partner  
Westfield Properties Inc., Its Manager



Richard L.K. Mendenhall, President

By signing below, I indicate the State of Montana's interest in negotiating a purchase and sale agreement with the Capital Hill Mall Partnership in accordance with the proposal contained in this letter. My signature does not establish any legally binding rights or obligations upon the Capital Hill Mall Partnership or the State of Montana.

DATED this 6<sup>th</sup> day of MAY, 2008.

By: Janet D. Kelly  
Its: Director, Department  
of Administration